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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/173,858
Filing Date: October 16, 1998
Appellant(s): MELTZER ET AL.

Ernest J. Beffel, Jr.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 6/6/05 and the previous Examiner's Answer mailed 8/24/05. This supplemental Examiner's Answer corrects the confusing rejection on the Declaration regarding a requirement of a petition under 37 CFR 1.47 in the previous Examiner's Answer.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying that there is no known appeals or interferences is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The rejection of claims 1-16 and 61-72 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

McKendrick, Banks begin to play with XML, Bank Technology News, Sep 1998, vol 11, iss 9, pp. 1-3.

W3C, Extensible Markup Language (XML) 1.0, 2/10/98, pp.1-37.

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The rejections of claims 1-16, 61-72 under 35 U.S.C. 103(a) as being unpatentable over McKendrick, *Banks begin to play with XML*, Bank Technology News, Sep 1998, Vol. 11, Iss. 9, pg. 6, 2 pgs, in view of W3C, *Extensible Markup Language (XML) 1.0*, 2/10/98, pages 1-37 (from the IDSs).

Regarding independent claim 1, McKendrick discloses:

- a machine-readable specification of an interface to transaction processes stored in memory accessible by at least one node in the network, including interpretation information providing a definition of an input document, and a definition of an output document (pages 1-2: McKendrick discloses applying XML in financial area to provide better bank services and utilizing XML for on-line business transactions involved with manipulation and transfer of data in the Internet such as purchase orders, invoices, and customer information. The purchase orders are considered as input documents, and the invoices are considered as output documents of the purchase orders in business transactions. Since the purchase orders as well as the invoices, which are the input and output

documents, are in XML, they definitely include information providing the definition for such a document according to XML structures. And since the transaction documents are in XML format, these documents are machine-readable documents and should be stored in memory of a server accessible by at least one node in the network)

McKendrick does not explicitly disclose that the definitions of the input document and the output document comprising respective descriptions of sets of storage units and logical structures for the sets of storage units.

W3C discloses that each XML document comprises respective descriptions of set of storage units and logical structures for the set of storage units (page 3, Introduction: "XML documents are made up of *storage units* called entities, which contain either *parsed or unparsed data*. Parsed data is made up of characters, some of which form character data, and some of which form *markup*. *Markup encodes a description of the document's storage layout and logical structure*. XML provides a mechanism to impose constraints on the storage layout and logical structure.")

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to have combined McKendrick into W3C for the following reason.

McKendrick discloses the transaction documents such as the purchase orders and the invoices in *XML format* for a business transaction over the Internet where a user can search and buy an item on-line, and W3C discloses the *structures of an XML document* which comprises storage units and the logical structures for the set of storage units.

This motivates to combine W3C into McKendrick for supporting the business transaction documents in XML format using the XML characteristics disclosed in W3C.

Regarding claim 2, which is dependent on claim 1, McKindrick does not disclose that the interpretation information includes data type specification for at least one logical structure in the definitions of the input and output document.
W3C discloses that each XML document contains one or more elements which are delimited by starts-tags and end-tags, and each element has a *type* identified by name called generic identifier and may have a set of *attribute specification* (page 13, Logical structure).
As mentioned in claim 1, since the documents used in the purchase transaction in McKindrick are in XML format, these documents inherit the features of a general XML document as disclosed in W3C. This is applied for all the claims relating to the transaction document structures and W3C is used for rejecting.

Regarding claim 3, which is dependent on claim 1, W3C discloses that the interpretation information includes at least one data structure mapping predefined sets of storage units for a particular logical structure in the definition of the input and output documents, to respective entries in a list (pages 14-17).

Regarding claims 4 and 5, which are dependent on claim 1, McKindrick and W3C do not disclose explicitly that a repository in memory accessible by at least one node in the

network storing a library of logical structures, interpretation information for logical structures, and the identifier of a transaction. However, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to have modified McKindrick and W3C to include a repository in memory for storing logical structures and the identifier of a transaction interface since it was well known in the art that any defined data for a program in a network should have a name for identifying and should be stored in a memory of a server for using later on such as retrieving data, identifying data, or manipulating data.

Regarding claim 6, which is dependent on claim 1, W3C discloses that the machine readable specification includes a document compliant with a definition of an interface document including logical structures for storing an identifier of the interface, and for storing at least one of specifications and references to specifications of a set of one or more transactions supported by the interface (page 13).

Regarding claim 7, which is dependent on claim 6, McKindrick does not disclose a reference to a specification of a particular transaction, and the specification of the particular transaction includes a document including logical structures for storing at least one of definitions and references to definitions input and output documents for the particular transaction. Instead, McKindrick discloses *applying XML for business-to-business transaction where data such as purchase orders and invoices are manipulated and transferred over the Internet* (page 2).

W3C discloses that each XML document comprises respective descriptions of set of storage units and logical structures for the set of storage units (page 3, Introduction: "XML documents are made up of *storage units* called entities, which contain either *parsed or unparsed data*. Parsed data is made up of characters, some of which form character data, and some of which form *markup*. *Markup encodes a description of the document's storage layout and logical structure*. XML provides a mechanism to impose constraints on the storage layout and logical structure.")

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to have combined W3C into McKindrick to include a reference to a specification of a particular transaction which has logical structures for storing at least one of definitions and references to documents as in W3C for the particular business transaction as in McKindrick since a reference is considered as a name or an identifier and the transaction documents in McKindrick such as the purchase orders and the invoices, considered as the input and output documents, must have a document name for identifying purpose.

Regarding claim 8, which is dependent on claim 1, W3C discloses that the storage units comprise parsed data (page 3, Introduction: "XML documents are made up storage units called entities, which contain either parsed or unparsed data...").

Regarding claim 9, which is dependent on claim 1, McKindrick does not explicitly disclose the parsed data in at least one of the input and output documents comprises:

- character data encoding text characters in the one of the input and output document
- markup data identifying sets of storage units according to the logical structure of the one of the input and output documents

Instead McKindrick discloses the business transactions involved with manipulation and transfer data such as purchase orders and invoices where invoices are considered as the output documents produced from the data portion of the purchase orders, which are considered as the input document (pages 1-2).

W3C discloses that the parsed data comprises:

- character data encoding text characters in XML documents (page 3, Introduction: "*XML documents* are made up storage units ...*Parsed data* is made up characters, some of which form *character data* ..."; page 6, Characters: "A parsed entity contains text, a sequence of characters, which may represent markup or character data
- markup data identifying sets of storage units according to the logical structure of XML documents (page 3, Introduction: "*XML documents* are made up storage units ... *Parsed data* is made up characters, some of which form character data, and some of which form *markup*. *Markup encodes a description of the document's storage layout and logical structure* ...")

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to have combined W3C into McKindrick since the XML business documents in McKindrick which function as input and output documents should comprise parsed data with claimed features since these features are characteristics of an XML document as taught in W3C.

Regarding claim 10, which is dependent on claim 9, W3C discloses that at least one of the sets of storage units encodes a plurality of text characters providing a natural language word (page 6, Document, page 7, Characters and page 8, Character Data and Markup: since the storage units encodes by character data and markup which are *text*, the storage units provide a natural language word).

Regarding claim 11, which is dependent on claim 8, W3C discloses that the interpretation information for at least one of the sets of storage units identified by a particular logical structure of at least one of the input and output documents, encodes respective definitions for sets of parsed characters (page 9: "the function of the markup in an XML document is to describe its storage and logical structure and to associate attribute-value pairs with its logical structures. XML provides a mechanism, the document type declaration, to *define constraints on the logical structure* and to support the use of predefined storage units ... the XML document type declaration contains or points to markup declarations that provide a grammar for a class of documents. This grammar is known as a *document type definition, or DTD* ...").

Regarding claim 12, which is dependent on claim 8, W3C discloses that the storage units comprise unparsed data (page 3, Introduction: "XML documents are made up storage units called entities, which contain either parsed or unparsed data..." page 20, Physical Structures).

Regarding claim 13, which is dependent on claim 1, as mentioned in claims 4 and 5 above, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to have modified McKindrick and W3C to include a repository in memory for storing all data related to the purchase transactions since it was well known in the art that any defined data for a program in a network should be stored in a memory

of a server for using later on such as retrieving data, identifying data, or manipulating data.

Regarding claim 14, which is dependent on claim 13, W3C discloses that the repository of document types includes a document type for identifying participant process in the network (page 9: "XML provides a mechanism, the *document type declaration*, to define constraints on the logical structure and to support the use of predefined storage units").

Regarding claim 15, which is dependent on claim 1, W3C discloses that the definitions of the input and output documents comprise document type definitions compliant with a standard Extensible Markup Language XML (page 9: "XML provides a mechanism, the document type declaration, to define constraints on the logical structure and to support the use of predefined storage units ... the XML document type declaration contains or points to markup declarations that provide a grammar for a class of documents. This grammar is known as a document type definition, DTD ... the DTD fro a document consists of both subsets taken together").

Regarding claim 16, which is dependent on claim 1, W3C discloses that the machine readable data structure including interpretation information comprises a document organized according to a document type definition compliant with a standard Extensible Markup Language XML (page 9: an XML document is a machine readable data

structure organized according to a DTD compliant with the standard Extensible Markup Language).

Regarding independent claim 61, McKindrick does not disclose explicitly:

- defining a machine readable definition of an input document for a node in the network including resources to execute a process in the transaction, and a machine readable definition of an output document for the node, the definitions the input and output documents comprising respective descriptions of sets of storage units and logical structures for the sets of storage units
- providing interpretation information for the logical structures to the node

Instead McKindrick discloses applying XML in financial area to provide better bank services and utilizing XML for on-line business transactions involved with manipulation and transfer of data in the Internet such as purchase orders, invoices, and customer information (pages 1-2). The purchase orders in McKindrick are considered as input documents, and the invoices are considered as output documents of the purchase orders in business transactions. Since the purchase orders as well as the invoices, which are the input and output documents, are in XML format, they definitely include information to provide the definition for said documents according to XML structures. And since the transaction documents are in XML format, these documents are machine-readable documents and should be stored in memory of a server accessible by at least one node in the network.

W3C discloses:

- defining a machine readable definitions of documents comprising respective descriptions of sets of storage units and logical structures for the sets of storage units (page 3, Introduction and page 9: XML documents are made up of storage units which contain either parsed or unparsed data where parsed data is made up characters some of which form character data, and some of which form markup to encode a *description of the document storage layout and logical structures*).
- providing interpretation information for the logical structures (page 9: the function of the markup in an XML document is to associate *attribute-value* pairs with its logical structures)

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to have combined McKendrick into W3C for the following reason. McKendrick discloses the transaction documents such as the purchase orders and the invoices in *XML format* for a business transaction over the Internet where a user can search and buy an item on-line and W3C discloses the *structures of an XML document* which comprises storage units and the logical structures for the set of storage units. This motivates to combine W3C into McKendrick for supporting the business transaction documents in XML format using the XML characteristics disclosed in W3C.

Claims 62-71 are for a method of claims 2-5, 8-12, 15, and are rejected under the same rationale.

Regarding claim 72, which is dependent on claim 61, McKindrick and W3C do not disclose:

- providing a parser to generate event signals in response to logical structures in the definition of the input document
- providing event listener program which respond to the event signals to execute the process

Instead McKindrick discloses the Internet business transactions via purchase orders and invoices in XML format where the purchase orders and the invoices are considered as input documents and output documents (pages 1-2).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to have modified McKindrick to include "providing a parser to generate event signals in response to logical structures..." and "providing event listener program which respond to the event signals to execute the process" for the following reason. The fact that McKindrick executes the transaction program by running the XML transaction documents which include logical structures suggests said parser and said event listener program as claimed, which are the must programs in the executing process.

(11) Response to Argument

A. *Response to Argument –Declaration:*

I. 37 CFR 1.131. Affidavit or declaration of prior invention.
(a) When any claim of an application or a patent under reexamination is rejected, the inventor of the subject matter of the rejected claim, the owner of the patent under reexamination, or the party qualified under § § 1.42, 1.43, or 1.47, may submit an appropriate oath or declaration to establish invention of the subject matter of the

rejected claim prior to the effective date of the reference or activity on which the rejection is based.
The following parties may make an affidavit or declaration under 37 CFR 1.131:
(A) All the inventors of the subject matter claimed.
(B) An affidavit or declaration by less than all named inventors of an application is accepted ***where it is shown that less than all named inventors of an application invented the subject matter of the claim or claims under rejection.***
*(C) **> If a petition under 37 CFR 1.47 was granted or the application was accepted under 37 CFR 1.42 or 1.43, the affidavit or declaration may be signed by the 37 CFR 1.47 applicant or the legal representative, where appropriate.< .*
(D) The assignee or other party in interest when it is not possible to produce the affidavit or declaration of the inventor. Ex parte Foster, 1903 C.D. 213,105 O.G. 261 (Comm'r Pat. 1903). Affidavits or declarations to overcome a rejection of a claim or claims must be made by the inventor or inventors of the subject matter of the rejected claim(s), a party qualified under 37 CFR 1.42, 1.43, or 1.47, or the assignee or other party in interest when it is not
possible to produce the affidavit or declaration of the inventor(s). Thus, where all of the named inventors of a pending application are not inventors of every claim of the application, any affidavit under 37 CFR 1.131 could be signed by only the inventor(s) of the subject matter of the rejected claims. Further, where it is shown that a joint inventor is deceased, refuses to sign, or is otherwise unavailable, the signatures of the remaining joint inventors are sufficient. However, the affidavit or declaration, even though signed by fewer than all the joint inventors, must show completion of the invention by all of the joint inventors of the subject matter of the claim(s) under rejection. In re Carlson, 79 F.2d 900, 27 USPQ 400 (CCPA 1935).

With regards to Appellant's remarks with respect to In re Carlson, it is noted that "Carlson" essentially deals with former "rule 75" as of that date (1935), which is not the rule currently in front of the Examiner to decide. When an affidavit or declaration is signed by less than all named inventors as stated above, 37 CFR 1.131 requires a showing of evidence (typically a petition under 37 CFR 1.182 requesting waiver of the rule (37 CFR 1.64)). Such showing is typically held to similar standards of a petition under 37 CFR 1.47, and is decided by the Office of Petitions. The Examiner has no authority to waive the requirements of Rule 131. A waiver of rule requires a petition

under separate cover filed in the instant application which will then be forwarded to the appropriate deciding official.

II. With respect to Appellant's remarks that the Declaration is procedurally sufficient, the Examiner refers to the explanation set forth above with respect to item # I. Note, without a proper showing with respect to the non-signing inventor as discussed above, the rejection is maintained.

III. With respect to Appellant's remarks regarding the evidence submitted to show completion, MPEP 715.02 states that "The 37 CFR 1.131 affidavit or declaration must establish possession of either the whole invention claimed or something falling within the claim (such as a species of a claimed genus), in the sense that the claim as a whole reads on it. In re Tanczyn, 347 F.2d 830, 146 USPQ 298 (CCPA 1965)." Further, "***where the examiner, in rejecting a claim under 35 U.S.C. 103, has treated a claim limitation as being an obvious feature or modification of the disclosure of the reference(s) relied upon, without citation of a reference which teaches such feature or modification, a 37 CFR 1.131 affidavit or declaration may be sufficient to overcome the rejection even if it does not show such feature or modification***" [emphasis added].

Note, Appellant's argument that the evidence "shows more than the McKendrick reference discloses, which is all that is necessary to remove the reference" is not applicable. As stated above, it is sufficient to remove a reference when used alone in a

35 USC 103 (a) rejection, not in combination with the teachings of a secondary reference (W3C), as in the instant application.

Further, with respect to the evidence submitted, the declaration fails to recite sufficient facts to show prior completion of the invention.

The evidence and declaration do not provide for the interface for transaction among the nodes in the network, the input documents and the output documents of the transactions, as well as the features that the input and output documents comprise respective description set of storage units and logical structures for the set of storage units, as included in independent claim 1, for example.

Applicant's attorney can not argue that the evidence provided in the Exhibit A supports the claimed limitations. The evidence and facts must be either stated in the declaration or incorporated by reference thereto. In this case, the evidence and declaration combined fail to provide support for the above identified claimed limitations, thus failing to show prior completion of the invention.

IV. With respect to Appellant's arguments that corroboration is not necessary for a 131 affidavit or declaration, the Examiner agrees. Corroboration refers to independent witnesses. What the Examiner is noting is a deficiency of evidence rather than a deficiency in corroboration. Appellant must present sufficient evidence to the Examiner in order to show completion of the invention prior to the effective date of the reference. To date, the evidence submitted is not sufficient.

V. The declarations filed on 1/31/05 under 37 CFR 1.131 has been considered but is ineffective to overcome the McKendrick reference.

In the interest of compact prosecution, the Examiner has considered the content of the declarations below:

> *"In general, proof of actual reduction to practice requires a showing that the apparatus actually existed and worked for its intended purpose. However, "there are some devices so simple that a mere construction of them is all that is necessary to constitute reduction to practice." In re Asahi/America Inc., **>68 F.3d 442, 37 USPQ2d 1204, 1206< (Fed. Cir. 1995) (Citing Newkirk v. *>Lulejian<, 825 F.2d 1581, 3USPQ2d 1793 (Fed. Cir. 1987) and Sachs v. Wadsworth, 48 F.2d 928, 929, 9 USPQ 252, 253 (CCPA 1931). The claimed restraint coupling held to be so simple a device that mere construction of it was sufficient to constitute reduction to practice. Photographs, coupled with articles and a technical report describing the coupling in detail were sufficient to show reduction to practice.)"* (MPEP 715.07 III)
>
> *"For an actual reduction to practice, the invention must have been sufficiently tested to demonstrate that it will work for its intended purpose, but it need not be in a commercially satisfactory stage of development. If a device is so simple, and its purpose and efficacy so obvious, construction alone is sufficient to demonstrate workability. King Instrument Corp. v. Otari Corp., 767 F.2d 853, 860, 226 USPQ 402, 407 (Fed. Cir. 1985). For additional cases pertaining to the requirements necessary to establish actual reduction to practice see DSL Dynamic Sciences, Ltd. v. Union Switch & Signal, Inc., 928 F.2d 1122, 1126, 18 USPQ2d 1152, 1155 (Fed. Cir. 1991) ("events occurring after an alleged actual reduction to practice can call into question whether reduction to practice has in fact occurred"); Corona v. Dovan, 273 U.S. 692, 1928 C.D.*

252 (1928) ("A process is reduced to practice when it is successfully performed. A machine is reduced to practice when it is assembled, adjusted and used. A manufacture [i.e., article of manufacture] is reduced to practice when it is completely manufactured. A composition of matter is reduced to practice when it is completely composed." 1928 C.D. at 262-263 (emphasis added).); Fitzgerald v. Arbib, 268 F.2d 763, 765-66, 122 USPQ 530, 531-32 (CCPA 1959) ("the reduction to practice of a three-dimensional design invention requires the production of an article embodying that design" in "other than a mere drawing")" (MPEP 2138.05).

Exhibit A, submitted as a written description, does not constitute an actual reduction to practice. Furthermore, only the filling of a US patent application which complies with the disclosure requirement of 35 USC 112 constitutes a constructive reduction to practice. A written description, no matter how complete, which has not been made the subject of a US patent application, does not qualify as reduction to practice.

Accordingly, Applicants have not established prior invention. The rejection is maintained.

B. *Response to argument -- the references McKendrick and W3C:*

I. Appellant argue that the combination of W3C into McKendrick is not proper since McKendrick's document is merely a short article and W3C's document is a syntax document which does not show "how to write programs or what the programs to write" (Brief, pages 8-9).

Examiner respectfully disagrees.

Though in a short article, McKendirick does disclose applying XML in financial area to provide better bank services and utilizing XML for on-line business transactions involved with manipulation and transfer of data in the Internet such as purchase orders, invoices, and customer information (pages 1-2). This implies an interface for business transaction since the online business transactions must be performed on an interface to process purchase orders and invoices. Since the purchase orders as well as the invoices, which are equivalent to the input and output documents, are in XML, they definitely include information providing the definition for such a document according to XML structures. McKendrick does not disclose that the definitions of the input and output documents comprising respective descriptions of set of storage units and logical structures for the sets of storage units. W3C discloses respective descriptions of sets of storage units and logical structures for the sets of storage units of XML format (page 3). The combination of W3C into McKendrick would provide a source in applying specific syntax needed for a XML structure as a mechanism to define constraint on the logical structures and support the use of storage units utilized in the business documents to effectively perform business services requirements.

II. Regarding independent claim 1, Appellant argues that McKendrick does not read on the claim since the purchase orders and the invoices as disclosed in McKendrick can not be equivalent to the input documents and the output documents, the XML documents should not include definitions of their own structures, and storing these XML documents in memory of a server can not be performed (Brief, page 9).

Examiner respectfully disagrees.

McKendrick discloses applying XML in financial area to provide better bank services and utilizing XML for on-line business transactions involved with manipulation and transfer of data in the Internet such as purchase orders, invoices, and customer information (pages 1-2). The online business transactions of the bank services implies that there exists an interface to perform these transactions where documents in the transactions, in XML, thus, are machine-readable.

The purchase order in the online business transaction in McKendrick is considered equivalent to an input document since it was well known as a form where a customer inputs order data to buy goods online. The invoice in the online business transaction is considered equivalent to an output document since it was well known as an itemized bill for the items in the purchase order and is outputted to customers. Since the purchase order and the invoice are XML documents, they definitely include information providing the definitions for these documents according to XML structures, which are admitted by Appellants that "a document with an XML *document type declaration* that contains or points to a *document type definition* (DTD)" (Brief, page 10).

Further, since the transaction documents are in XML format and these business transactions are carried out online for manipulating and transferring data on the Internet, these business transactions as well as the transaction interface with machine readable specification for carrying out the business transactions must be stored in memory of a server accessible by at least one node, which can be a client terminal, in the network, for processing data relating to the transactions. This is understandable since storing

created data was a well known step, which is mandatory in processing data. Otherwise, data will be lost.

III. Regarding independent claim 61, Appellant argue that McKendrick does not read on the claim (Brief, page 12).

This is not completely true. The Examiner stated in the office action that McKendrick *does not explicitly disclose the claimed limitations.* However, McKendrick does disclose applying XML in financial area to provide better bank services and utilizing XML for on-line business transactions involved with manipulation and transfer of data in the Internet such as purchase order, invoices, and customer information (pages 1-2). These features of McKendrick would have been obvious to be modified to include the claimed limitations as explained in the rejection of claim 61 above. It is noted that claim 61 is not rejected by McKendrick alone. Claim 61 is rejected by McKendrick in combination with W3C where both references read on the claim.

For the above reasons, it is believed that the rejections should be sustained

Respectfully submitted,

Cong-Lac Huynh
Examiner
Art Unit 2178

clh
September 1, 2005

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